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Sigismond Stydolf Esq; Appellant. } *Susanna Langborne*
 Widdow Sister and Heir of
Thomas Bostock Gent. decea.
 Respondent.

The Appellant's Case.

THOMAS BOSTOCK of London Scrivener, had several Trusts lodged in him for the Appellant, but died before any Account given.

In 1677.

The Appellant brought his Bill in Chancery against the Representatives of *Bostock* for Relief in all the said Trusts, and obtained a Decree for an Account of the Profits of a Trust Estate that had been received under the Appellants Father's Deed of Settlement; and after Nine Years spent, the Master made his Report, and certified due to the Appellant 2416*l.* 1*s.* 8*d.* And the Decree was Signed and Inrolled against *Thomas Hull* and *Penelope* his Wife, who was Relict and Executrix of *Thomas Bostock Gent.* who was Executor of *William Bostock*, And also Administratrix of the Goods and Chattles, with the Will annexed of *Bostock* the Scrivener, unadministred by *William* and *Thomas*. But as to a further Demand of 6000*l.* Principle Monies of this Appellant's Father's and Mother's Cash in *Bostock's* Hands, nothing was at that time Decreed; but the Cause lies still open.

In 1686.
 20th July
 1688.

The Appellant was forced to bring a new Bill in aid of his former Decree. And the 20th of July, 1688. upon hearing that Cause, it was Decreed, That both the Real and Personal Estate of *Tho. Bostock Gent.* should be subject to make the Appellant Satisfaction. As also the Scrivener's Affets come unto *Hull's* Hands, particularly, 647*l.* 12*s.* 6*d.* which was paid in by one *Penton* out of a Church Lease. Which Decree, upon a Rehearing before the then Lords Commissioners, *Maynard*, *Kecke* and *Rawlinson*, was confirmed. And afterwards being Reversed upon another Rehearing on the Behalf of *Luke Langborn*, and *Susanna* his Wife, the now Respondent before the Lords Commissioners, *Rawlinson* and *Hutchins*, was afterwards again Affirmed in this most Honourable House, upon the Appeal brought by this Appellant.

Afterwards the Appellant proceeded upon his former Decree, and stated his Debt to 2964*l.* 16*s.* and obtained a Report for 375*l.* 15*s.* in the Respondents Hands of the Rents decreed for the Appellants Satisfaction. The

5th July
1693.

The Appellant upon the said Report moved, that the 375*l.* 15*s.* might be paid to the Appellant; whereupon it was ordered, the Respondent should pay the Appellant the Money due by the last Report by a fix'd Day; or in default thereof, the real Estate to be forthwith Sold. And in the said Order, there is contained this imperfect Clause, *viz.* " That the Defendant *Langborne* upon giving the Plaintiff Security to " be allow'd by the Master to indemnifie him against all Costs " and Damages, in prosecuting for the Discovery of the Personal Estate in whose Hands soever the same is. The Ordering part being left out.

Langborn or the Respondent never made one step towards complying with the Terms of the last Order, but by their Default the Lands were Sold, subject to 200*l.* Annuity to Mrs *Hull* for Life, for 2500*l.* which was paid the Appellant in part of his Debt: But for any further Satisfaction, he was forced to wait 'till it could be got out of the Assets in *Hull's* Hands, which with the particular Summ of 647*l.* 12*l.* 6*s.* were stated to 810*l.* 6*s.* 4*l.*

Hull not taking care to pay the same, his Annuity of 200*l.* *per. Ann.* was stayed by several Orders in the Chancery to answer it: And after some time, *Hull* and his Wife got an Order to be let into their Annuity again; unless cause. And under pretence of shewing cause against this Matter:

1st Feb.
1699.

Langborne and his Wife the now Respondent, notwithstanding the Defect of the said imperfect Order and themselves not having performed the Terms or Conditions of the said Order; yet under colour thereof, procured an Order of the 1st Feb. 1699. for a Reference of several Matters, nothing relating to the Merits of the Cause; but as conceived, to perplex the Cause, and delay the Appellant: And proceeded to procure the Master's Report of 17th July 1700. pursuant thereto.

17th July
1700.

12th Dec.
1700.

And the Matters of the said Report coming to be heard between *Hull* and his Wife, and the said Respondent, who were Defendants only in the Cause by Contrivance between themselves without the knowledge of the Appellant, who was Plaintiff in the Cause, the 12th Decemb. 1700. It was Ordered and Decreed the said 810*l.* 6*s.* Assets in *Hull's* Hands should be paid to *Langborne* and his Wife, the Respondent.

After which, as soon as the Appellant got any Intimation thereof, he applyed to the Court for a Rehearing; and just when his Rehearing was ready to have come on, the said *Langborne* and his Wife, the now Respondent, Obtained an Order

Order for the Appellant to be first examined to Interrogatories according to the Order of 1st Feb. And afterwards when it was look'd into, it was found that in truth there was no such Order for the Appellants Examination: Yet by a subsequent Order, the Appellant was Ordered to be examined touching the Matters contained in the said Order of 1st Feb. 1699.

Which is a Proceeding not known before in the Chancery against a Plaintiff in a Case so circumstanced as this is. And which Order of 5th July 1693. and 1st Feb. 1699. The Masters Report of 17th July 1700. The Decree of 12th Decemb. 1700. and the subsequent Orders are as conceived great Hardships on the Appellant, and not consistent with the Rules of Equity.

1st. For that the 375l. 15s. reported to be in the Respondents Hands so long since, ought to have been paid to the Appellant towards his Satisfaction.

2dly, For that the said Langhorne, or the now Respondent his Wife, ought not to have carried on their Proceedings upon the said Order of the 5th July, not having complied with the Conditions of the said Order: And for the Defect in wanting the Ordering Part.

3dly, For that it could never be intended by the said Order, That Langhorne should have any thing out of the Estate until the Appellant was first satisfied, as appears by Langhorn's being thereby directed to pay the Appellant's whole Money.

4thly, For that Langhorne and his Wife, the now Respondent as Defendants only, could have no Capacity to have any thing Decreed to them; nor can a Decree Signed and Inrolled and Affirmed in this most Honourable House, be varied by any subsequent Proceedings in Chancery.

For which said Reasons, and many others appearing in the Proceedings, which have been had in this Cause, The Appellant humbly hopes the Orders of 5th July 1693, and 1st Feb. 1699. The Report of 17 July 1700. The Decree of 12th Decemb. following, The Order of 7th Novemb. 1702. and the subsequent Order may be Reversed and Discharged, And the Appellant Effectually Relieved.

Stephen Harvey

Spencer Cowper.

1870

THE
CASE

OF

Sigismund Sydolf Esq;

Appellant,

Against

Susanna Langborne, Widow,
Respondent, &

To be Heard Feb. 23. 1705.